

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of the Chairperson
Honolulu, Hawaii 96813

July 22, 2009

State of Hawaii
Board of Land and Natural Resources
Honolulu, Hawaii

REQUEST FOR DELEGATION TO THE CHAIRPERSON AND FIRST DEPUTY
THE AUTHORITY TO APPOINT ADMINISTRATIVE HEARINGS OFFICERS
FOR THE CONDUCT OF CONTESTED CASES APPROVED BY THE BOARD

I. ACTION REQUESTED:

The Department of Land and Natural Resources (hereinafter the "Department"), Office of the Chairperson, hereby submits a request for the approval by the Board of Land and Natural Resources (hereinafter the "Board") to delegate to the Chairperson of the Board and the First Deputy of the Department the authority to appoint administrative hearings officers for the conduct of contested cases that are approved by the Board, pursuant to §171-6, Subsections (8) and (11), Hawaii Revised Statutes (HRS), and §13-1-32, Hawaii Administrative Rules (HAR).

II. DISCUSSION:

A. Legal Authority

§171-6(8), HRS, provides that the Board may "[d]elegate to the chairperson or employees of the department of land and natural resources, subject to the board's control and responsibility, such powers and duties as may be lawful or proper for the performance of the functions vested in the board".

§171-6(11), HRS, and §13-1-32, HAR, provide that the Board may conduct a contested case hearing by itself or may delegate the conduct of such a hearing to a hearing officer.

B. The Proposal

This submittal requests that the Board delegate to the Chairperson its authority to select and appoint a hearing officer in any contested case hearing that has been approved by the Board. It will also authorize the First Deputy to assume the duty of selecting and appointing a hearing officer when the Chairperson is not available due to reasons such as personal absence and conflict of interest.

This delegation of authority will be effective in all contested cases filed to the Board, and include the authority to extend a hearing officer's appointment if the initial appointment goes by a term.

The Board will retain the authority to approve the holding of a contested case hearing upon a party's petition, except for the cases filed through the Civil Resource Violations System in which contested case hearings are automatically granted by the Board and administered by the Department.

C. Background and Benefits of the New Procedure

This proposal, if approved, will simplify and expedite the process in appointing a hearing officer in contested cases, lessen the burden of the Board in such administrative duties, and minimize the staff time spent in the process.

Under the Department's applicable rules, the Board holds the authority to approve a contested case hearing and, if the Board chooses to delegate the duty of conducting the hearing to a hearing officer, to appoint the hearing officer upon the nomination by the Chairperson. Alternatively, when submitting a request to hold a contested case hearing, the Department may request that the Board delegate the appointment authority to the Chairperson in that particular case.

Usually, a solicitation for hearing officer services is announced at the beginning of a fiscal year, and submissions for consideration are reviewed and decided by a committee in each of the individual cases. After that, a recommendation is made to the Chairperson who would formally nominate the candidate to the Board or appoint the hearing officer if authority has been delegated to the Chairperson in an individual case.

In a nutshell, the Department selects its hearing officers and submits for appointment by the Board on an ad hoc basis. This process is tedious and timing consuming, and may potentially slow down the conduct of contested cases.

In addition, in this process, any disputes by any parties as to the hearing officer appointment will need to come back to the Board for disposition. Or if there is any need to appoint a substitute hearing officer in a specific case, the case will likely be returned to the Board again for selection and appointment of a new hearing officer. Although these situations do not happen frequently, this ad hoc appointment approach does add additional burden to the Department's workload, the Board's agenda, and costs to parties.

Another issue in this appointment process pertains to certain contested cases where the final decision power has been delegated to the Chairperson. In such a situation, a conflict may arise due to the fact that the Chairperson will need to assume two separate roles – one as the manager of the tribunal who gets to select or appoint the hearing officer and the other as the adjudicator who will ultimately render the final decision based upon the same hearing officer's recommendation.

To avoid this conflict, and to make sure that the Chairperson's administrative responsibility will be properly covered when the Chairperson is not available for any reasons, staff believes that a clear directive from the Board to this effect is necessary so that the First Deputy may step up and take one of the roles. §§13-1-32.2 and 55, HAR, do clearly authorize the Deputy Director of the


Department to assume certain duties of the Chairperson in relation to the conduct of contested case proceedings. This directive will make sure that such a duty will go to the First Deputy under these two provisions, and not the Vice Chairperson under §13-1-8.1, HAR.

III. RECOMMENDATION:

“That the Board of Land and Natural Resources

1. Delegate to the Chairperson the authority to appoint administrative hearing officers for the conduct of contested cases that are filed to and approved by the Board; and
2. Extend such delegation to the First Deputy of the Department when the Chairperson is not available.


Respectfully submitted,



BIN C. LI

Administrative Proceedings Coordinator

APPROVED FOR SUBMITTAL:



LAURA H. THIELEN
Chairperson
Board of Land and Natural Resources